IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5180 of 1994
WITH
SPECIAL CIVIL APPLICAITON NO. 2792 OF 1995

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5180 of 1994
MR RS SANJANWALA for Petitioner No. 1-2
MR RM CHAUHAN AGP for Respondent No. 1-3
MR KS JHAVERI for Respondent No. 4
MR DS VASAVADA for Respondent No. 5
MR JT TRIVEDI for Respondent No. 6

1. Special Civil Application No. 2792 of 1995
MR RS SANJANWALA for Petitioner No. 1
MR SR BRAHMBHATT for Respondent No. 1
MR DS VASAVADA for Respondent No. 2
MR JT TRIVEDI for Respondent No. 3
MR HIMANSHU TRIVEDI for Respondent No. 3
NOTICE NOT RECD BACK for Respondent No. 4

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 07-09/05/2003

COMMON ORAL JUDGEMENT

1. In both these petitions filed by one and the same petitioner, and identical and similar questions are involved and hence these petitions are being disposed of by this common judgment.

2. By means of Spl.C.A. No. 2792 of 1995, the petitioner has sought for quashing and setting aside the orders bearing Nos. LW/PL/1714-VII/908 to 912 all dated 1-7-1994 passed by the respondent Kandla Port Trust. Whereby lease of plots commenced on 10-4-1974 have been cancelled and determined with effect from 9-4-1995 while in Spl. C.A. No. 5180 of 1994, the petitioner has sought for quashing and aside the orders of the Collector dated 10-3-1994 wherein lease of agreement extended on 19-3-1976 have been revoked and the application dated 29-10-1994 of the petitioner has been rejected and that of the Secretary (Appeals) dated 4-4-1994 and for a direction to the respondents to extend the lease for further 20 years and also for a directions to the respondents no.1 and 2; State of Gujarat and the Collector, Kutch respectively to renew the lease of the land in question for further period of 20 years on the same terms and conditions and also for restraining the respondents no. 1 and 2, their servants, agents, contractors etc. not to dispossess the petitioner from the land in question or otherwise interfere with the possession and enjoyment of the petitioner's suit land except by following due process of law.

3. In Spl. C.A. No. 2792 of 1995, it is alleged that the petitioner is one of the oldest salt works in the country with a glorious history. It is the first public limited company in the erstwhile State of Kutch. The petitioner's firm was granted lease of 560 Acres of land on 1o-4-1934 by the then State of Kutch. After making development Production of salt started in the year 1941. Even during the period of second world war, the petitioner was successful in producing High Class fine white salt. Lease of additional land was also granted to the petitioner in the year 1948 and thus the petitioner had total area of about 1400 Acres of land. Development of Kandla was to be undertaken by disturbing the works in question. Production of salt by the petitioner was increased in the year 1948-49 and hence additional land admeasuring 1385 acres was also given to the petitioner

by Kandla Port Trust. Thus, the petitioner Company has 2708 Acres of land for producing the salt. Amenities for the employees were also provided. The quarters were also provided for the contract, seasonal and casual labourers. The petitioner company installed 12 storage tanks at different sites for providing potable water to the employees. Thus, the petitioner company has given substantial facilities i.e. primary schools, dispensary, recreation and sports to the persons/employees concerned by making development. The petitioner company also erected rail network and was running locomotives for internal transfer of salt. Due to natural calamities, the production of salt was reduced. The petitioner was one of the largest exporters of salt to many countries including Japan and the quality of salt manufactured in Kandla was adjudged to be containing greater percentage of NaCL, due to the locational advantage and natural reasons. The petitioner company required additional land. Additional storage capacity was required to store the sea water so as to increase the salinity by evaporation of the water contents, as the vacant lands were available from the respondent no. 1 which were adjoining to the original piece of land, leased out to the company by the Maharao of Kutch and then the same was renewed by the Government of Gujarat, the petitioner company took the same land on lease in the decade of 1950s and the lease deeds were executed in the year 1963. Details of land area and lease are given as under :

A. Area of land : Acres 38850.
Date of possession by the petitioner company 9.2.1953 for the period, 9-2-1953 to 9-4-1974.

B. Area of land : Acres 25.574
Date of possession by the petitioner company : 17-8-1962.
First lease deed made on : 10-4-1964 for the period, 17-8-1962 to 9-4-1974.

Lease renewed for the period till 9-4-2004 vide lease deed dated 7-4-1979.

C. Area of land : Acres 1335.54
Date of possession by the petitioner company : 9-2-1959
First lease deed made on : 10-4-1963 for the period : 9-2-1989 to 9-4-1974.

Lease renewed for the period till :
9-4-2004 vide lease deed dated 7-4-1979.

Remaining two plots of land admeasuring Acres 27.924 and Acres 2.400 respectively were also leased out and lease was renewed till 9-4-2004 for a period of 30 years from 9-4-1974.

In the past the respondent Kandla Port Trust has not been fair in their dealing with the petitioner in respect of the leases . When the lease came up for renewal effective from 10-4-1974, the respondent no.1 Kandla Port Trust created various obstacles in the way of renewing the leases and the petitioner was pressurized to surrender 117 acres of land developed at the considerable costs of the petitioner, to the IFFCO without any compensation and the renewal was granted only thereafter and lease deed was finalized as late as in the year 1979. The salt work suffered gradually due to heavy damage to the ground work and other damage caused by exceptionally heavy rains and very high tides in two to three seasons the management tried to restart the operations on a reasonable scale in the year 1986, after entering into compromise with the Labour unions. The petitioner wanted to restart the activity of salt manufacturing on a larger scale and tried its level best to get the necessary finance. However, due to reasons beyond the control of the management, the operations could not be restarted. Hence, the petitioner had no option but to approach the Board for Industrial and Financial Reconstruction, New Delhi ("BIFR" for short). The application for that purpose was made by the petitioner on 1-1-1988. The

reference of the petitioner's company was not held to be maintainable by BIFR in terms of the order passe don 28-2-1990 and the matter was considered as being outside the purview of SICA. Appeal No. 18 of 1990 was filed before the Appellate Authority and that appeal was allowed on 11-10-1990 holding that Reference u/s 15 of the SICA was maintainable and the matter was referred back to the BIFR by the appellate authority. BIFR passed the order on 26-2-1991 holding that the petitioner Company to be a sick industrial unit u/s 3 (1) (o) of the SICA and Bank of India (respondent no. 3) was appointed as an operating agency u/s 17 (3) of the SICA and was asked to submit a report on viability of the petitioner and also a feasible rehabilitation scheme. The respondent no. 3 - Bank of India submitted its report dated 22-10-1991 wherein the petitioner company was considered to be viable unit and a draft report on the techno-economic viability and rehabilitation of the unit

was submitted to BIFR. Owing to change in parameters concerning the sick units, in regard to the promoters' contribution, the operating agency submitted a revised draft report to BIFR vide its letter dated 24-4-1992. As Bank of India and IRBI expressed unwillingness to advance funds, the rehabilitation scheme was required certain changes. Later on, the promoters deposited the amount of Rs.50/- lacs in Bank of India. Revised scheme of rehabilitation was required to be implemented. The respondent no. 1 had leased out 5 separate plots of lands for the purpose of manufacturing salt etc. But due to natural calamities which were beyond control of the petitioner, the petitioner was not in a position to carry out its activities in the year 1994. The respondent no. 1 vide its letter dated 1-7-1994, informed the petitioner that the respondent no. 1 has cancelled and determined the lease of land granted to the petitioner by the respondent no. 1 on the ground that the petitioner has failed to use the land for the purpose for which it was allotted and that land in question was lying idle and was not used for manufacturing salt. Kandla Port trust authorised Assistant Estate Manager under Clause 4 of the Lease Deed to reenter the promises and take over the possession of the plot on 10-4-1995 at 13-00 hours. The petitioner company was directed to remain physically present on the site of the land on the date and time fixed to hand over peaceful possession of the land. In absence of the petitioner, the possession of the land will be taken over and after drawing the panchnama as the lease has already been determined and vacant possession is required to be taken over. The petitioner replied vide letter dated 29-9-1994 stating that the petitioner had sent to the respondent no. 1 Bank Draft for Rs.5,15,491/- for payment of outstanding dues of the land towards ground rent and interest thereon for the period ending 31-3-1994 by a registered letter dated 26-10-1994. That letter along with the Bank Draft was acknowledged by the respondent no. 1, but they have returned the Bank Draft to the petitioner under cover of letter dated 13-1-1995 after the period of two months. Thus, the respondent no.1 had refused to accept payment of past dues amounting to a large sum. The respondent no. 1 is a Port Trust constituted under the provisions

of the Major Port Trust Act, 1963 and the respondent no. 1 is a State within the meaning of Article 12 of the Constitution of India and hence the respondent no. 1 is not entitled to take such arbitrary action which is without any authority of law. The respondent no. 1 could have taken such action after following due process of law under the provisions of Public Premises (Eviction

of Unauthorised Occupants) Act, 1971. The petitioner has taken all necessary steps for renewal of its unit and restraining the production of iodisede salt and hence the respondent no. 1 was not entitled to retake possession of the premises. Hence, the action threatened by the respondent no. 1 in the aforesaid letter is without any authority of law. The action threatened by the respondent no.1 is in violation of the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Even if the respondent no. 1 has got such right of retaking the possession, it should be in accordance with the provisions of the aforesaid Eviction Act, 1971 subject to other appellate provisions provided in the said Act. The impugned orders passed by the respondent no. 1 are arbitrary, inequitable, improper, unjust, illegal and violative of Articles 14, 19(1) (g) and 21 of the Constitution of India. The action of the respondent no. 1 is against the principles of natural justice and without giving any opportunity of hearing to the petitioner. Even no notice for determining the lease has been issued to the petitioner by respondent no. 1. No proceedings can be initiated when the petitioner has been declared to be a sick industrial unit by the BIFR.
operating agency u/s 17 (3) of the SICA. The amount of Rs.50 lacs has been deposited in non-interest bearing no lien account with the Bank of India. Hence, the impugned orders passed by the respondent no. 1 are not sustainable in the eye of law. There was no breach of Clause - 2 (iv) of the Lease Agreement. Non-affording of an opportunity of hearing resulted in violation of the principles of natural justice. The petitioner has moved an application dated 17-4-1982 for renewal of the licence and that was renewed upto 30-6-1987 for unit no. 3. The licence for manufacturing salt could not be renewed, as validity of the same runs concurrently with the tenure of the lease. Before determining the lease, the notice ought to have been given to the respondent no. 3 - Bank of India which is an operating agency. It is also asserted that about 1000 labourers who were working, have been provided residential accommodation on the plots of the land as part of service condition. In case, the possession of the land is taken, the families of 1000 labourers would be rendered homeless which could cause enormous hardships to those persons. Hence, it is necessary to restrain the respondent no. 1 from taking possession. BIFR has also issued notice to the respondent no. 1 to attend hearing of the proceedings of BIFR scheduled to be held on 27-3-1995. But the same was not attended any representative of the respondent no. 1

4. The respondent no. 1 Kandla Port Trust has filed

an affidavit-in-reply. The petitioner has also filed further affidavits. In the counter affidavit, it is stated that this writ petition is not maintainable in the eye of law inasmuch as that there is no violation of fundamental right as the petitioner being a company is juristic person and this petition is for enforcement of contractual obligation for which no reliefs can be granted under Article 226 of the Constitution. The respondent no. 1 required 117 Acres of land for expansion of existing installation and port facilities. After litigation the respondent could be able to get that piece of land for is own use from the petitioner. The petitioner has been defaulted in paying lease rent even after litigations. As per Clause-7 of the lease deed it was clearly stipulated and agreed that during the lease term the lessee shall have requisite licence issued by the Government of India otherwise before expiry of term of lease, lease granted shall be deemed to have been determined automatically. The petitioner company's licence has not been renewed after 30-6-1987 as per letter dated 20-8-1990 issued by Dy. Salt Commissioner The respondent no. 1 issued notice dated 27-5-1991 duly acknowledged by the petitioner to remedy the breaches. Even after three years the petitioner failed to remedy the breaches, hence lease stands automatically determined. Though the respondent no.1 tried to help the petitioner even in issuing no objection certificate and granted permission for transfer the part of the land to some other company for Rs.22 lacs. The respondent no. 1 was not impleaded as party in the proceedings before BIFR nor the petitioner was informed about the proceedings which were instituted and pending before BIFR, as such unilateral proceedings are not binding on the respondent no. 1 and are void ab initio. The respondent no. 1 got a notice of BIFR dated 19-1-1995 for next date of hearing on 27-3-1995, then the respondent informed the BIFR about all the facts of the case. The respondent no. 1 has required the lease land of the petitioner for future development of the Port Trust and wants to retain this valuable land for its own use. It was also pointed out that only 200 workers were working and not 1000as stated in the petition.

5. Heard the learned counsel for the parties at length and perused relevant papers on record.

6. The contention of the learned counsel for the petitioner is that the notice dated 27-5-1991 was given by the Kandla Port Trust - respondent no. 1 to remedy the breaches. Second notice of determination of lease

was given without any prior notice or without affording any opportunity of hearing to the petitioner. As, the respondent no. 1 itself had permitted the petitioner to remedy the breaches and hence second notice is malafide and it was issued when the respondent no. 1 found that the promoters have been inducted as it appears from the letter 14-6-1994 addressed by the respondent no. 1 to the petitioner wherein it is stated that MoU executed on 3-2-1994 sent to the respondent no. 1 by the Chartered Accountant of the petitioner is signed and executed without the notice and permission of Kandla Port and on its back. Such a unilateral act being illegal and unreasonable is illegal, void ab-initio and is not binding /acceptable to Kandla Port Trust. That MoU was also not binding on the respondent no. 1 and that was rejected. Promoter is nothing but share holder of the Company and he is not substitute of the lessee. Thus, the main contentions of the petitioners are as follows :

(i) Second notice determining the lease is illegal, void ab-initio and is without giving any opportunity of hearing to the petitioner by the respondent no. 1 and violative of principle of natural justice.

(ii) The provisions of Section 22 (4) (a) of SICA require suspension or stay of any proceedings pending before the authority concerned which were initiated for enforcement of any right, obligation or liability if industrial unit or undertaking has been declared as sick under the provisions of SICA and all the proceedings for determination of lease of the petitioner's unit are barred by statutory provisions of Section 22 (1) of SICA, hence determination of lease of the petitioner's company which has been sick unit are illegal and void ab initio.

(iii) The very object of SICA is only to revive or rehabilitate the sick company. The petitioner's company was sick and the proceedings for revival or rehabilitation have been started, hence the petitioner's company cannot be destroyed on the pretext of violation or breaches of the terms and conditions of the lease, as such all proceedings for determination of lease of the petitioner's company are illegal and not sustainable in the eye of law.

(iv) The respondent no.1 required the petitioner to remedy breaches stated in the notice itself. For

that purpose, the petitioner has taken substantial steps. The promoter had deposited an amount of Rs.50.00 lacs for rehabilitation of the petitioner's unit and the amount was deposited with the operating agency appointed by BIFR and the process was at the verge of completion. The petitioner and the respondent no. 1 waited for three years for that purpose. As soon as the respondent no. 1 came to know about induction of the promoters, the lease was determined without giving any opportunity of hearing. The learned counsel for the petitioner requested the Court to give one more opportunity of rehabilitation of the petitioner's unit in the interest of justice as the petitioner is still in possession of the land.

(v) The respondent no. 1 comes within the meaning of State and it is not expected from the respondent no. 1 to deal with the petitioner in determining lease in arbitrary manner.

(vi) The action of the respondent no. 1 in closing the manufacturing process of salt by determining the lease is arbitrary, mala fide and against the doctrine of fair play and public policy.

7. Learned counsel for the respondent no. 1 raised following legal aspects with regard to maintainability of writ petition :

A. Writ petition by a Company is not entertainable for enforcement of fundamental right provided under Article 19 of the Constitution of India. The petitioner Company is a juristic person and is not a citizen. Hence the petitioner Company cannot enforce fundamental right under Article 19 (1) (g) of the Constitution of India. He has relied on the following decisions :

(i) Decision of the Supreme Court in the case of The Divisional Forest Officer V. Bishwanath Tea Co. Ltd., reported in AIR 1981 SC 1368, wherein it has been held as under :

"The respondent not being citizen was not entitled to complain of breach or violation of fundamental right under Art. 19 (1)(g0 (See State Trading Corporation of India Ltd. V. The Commercial Tax Officer Vishakhapatnam (1964) 4 SCR 99 : (AIR 1963 SC 1811) and Tata Engineering

and Locomotive Co. V. State of Bihar 950 SCR 869 (AIR 1951 SC 41 or (1964) 6 SCR 885 : AIR 1965 SC 40?). However, the shareholders of a company can complain of infringement of their fundamental rights (See Bennett Coleman and Co. V. Union of India, (1973) 2 SCR 757 : (AIR 1973 SC 106). Such is not the case pleaded. Therefore, the writ petition on the allegation of infringement of fundamental right under Art. 19 (1) (g) at the instance of respondent company alone was not maintainable."

(ii) Decision of Constitutional Bench of the Supreme Court in the case of State Trading Corporation of India Vs. The Commercial Tax Officer and others, reported in AIR 1963 SC 1811, wherein it is held as under :

"The State Trading Corporation, a company registered under the Indian Companies Act, 1956 is not a citizen within the meaning of Art. 19 of the Constitution and cannot ask for the enforcement of fundamental rights granted to citizens under the said Article.

(iii) In another decision of the Constitutional Bench of the Supreme Court in the case of The Tata Engineering and Locomotive Co. Ltd. Vs. State of Bihar and others reported in AIR 1965 SC 40, wherein it has been observed as under :

"The Corporation in law is equal to a natural person and has a legal entity of its own. The entity of the Corporation is entirely separate from that of its share-holders, it bears its own name and has a seal of its own; its assets are separate and distinct from those of its members, it can sue and be sued exclusively for its own purpose, its creditors cannot obtain satisfaction from the assets of its members, the liability of the members or shareholders is limited to the capital invested by them; similarly, the creditors of the members have no right to the assets of the Corporation.

If the Corporations and companies are not citizens, it means that the Constitution intended that they should not get the benefit of Art. 19. The effect of confining Art. 19 to citizens as distinguished from persons to whom other Articles like 14 apply, clearly must be that it is only citizens to whom the rights under Art. 19 are

guaranteed.

The doctrine of lifting of the veil postulates the existence of dualism between the corporation or company on the one hand and its members or shareholders on the other."

B. Contracts between statutory body and private individuals are not enforceable under writ jurisdiction.

Second contention of the learned counsel for the respondent is that the matter arises out of the lease agreement between Kandla Port Trust and the petitioner and hence it becomes a private contract. Therefore, it cannot be enforced by invoking the writ jurisdiction. For that purpose, alternative remedy may be exhausted by way of civil suit and / or dispute can be resolved by an arbitrator and private dispute cannot be resolved under the writ jurisdiction even that contract has been made by a state authority or statutory body. In support of submissions, he has relied on the following decisions :

(i) Decision of the Supreme Court in the case of State of U.P. and others Vs. Bridge & Roof Company (India) Ltd. reported in 1996 (6) SCC 22, wherein it is held as under :

"It is yet a matter within the realm of private law and, therefore, outside the purview of the writ petition. The Arbitrator under the contract or the civil court, as the case may be, can go into and decide both questions of fact as well as questions of law.

(ii) Decision of the Supreme Court in the case of Kerala State Electricity Board and another V. Kurien E. Kalathil and others, reported in 2000 (6) SCC 293, wherein it has been laid down as under :

"A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied.

The contract between the parties is in the realm of private law. It is not a statutory

contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have relegated to other remedies."

(iii) The decision of the Supreme Court in the case of State of Gujarat and others Vs. Meghji Pethraj Shah Charitable Trust and others, reported in 1994 (3) SCC 552, wherein it ha been observed as under :

"It was - as has been repeatedly urged by Shri Ramaswamy - a matter governed by a contract, the writ petition is not maintainable since it is a public law remedy and is not available in private law field, e.g. where the matter is governed by a non-statutory contract."

(iv) The decision of the division bench of this Court in the case of M/s. Laxmi Steel Company, Baroda Vs. Receiver of Wreck and Sub-Divisional Magistrate, Navsari & Ors, reported in 1992 (2) G.L.R. 1143, wherein it has been laid down as under :

"The Bombay High Court inter alia held that the writ petition ought to fail on the ground that the discretionary relief under Art.. 226 of the Constitution ought not to be granted to the petitioners. The Bombay High Court upheld the contention raised by the respondents that the transaction in question relating to purchase of the salvaged vessel was in the realm of contract and that it would be a fit case in which the Court may legitimately decline to extend its discretion in favour of the party who in effect tried to obtain an unfair advantage and also to commit breach of the conditions under which it had submitted the tender."

(v) The decision of the Supreme Court in the case of Kulchhinder Singh and others Vs. Hardayal Singh Brar and others, reported in AIR 1976 SC 2216, wherein it has been held as under :

"At its best, the writ petition seeks enforcement of a binding contract but the neat and necessary repellant is that the remedy of Article 226 is unavailable to enforce a contract qua contract."

(vi) The decision of the Supreme Court in the case of S. Narayan Iyer Vs. Union of India and Another, reported in 1976 (3) SCC 428, wherein it has been observed as under :

"The appeal should be dismissed for at the outset the writ petition was incompetent. First when any subscriber to a telephone enters into a contract with the State, the subscriber has the option to enter into a contract or not. If he does so, he has to pay the rates which are charged by the State for installation. A subscriber cannot say that the rates are not fair. No one is compelling one to subscribe . Second, telephone tariff is subordinate legislation and a legislative process. Under Indian Telegraph Act, Section 7 empowers the Central Government to make rules inter alia for rates. These rules are laid before each House of Parliament. The rules take effect when they are passed by the Parliament. Third, the question of rate is first gone into by the Tariff Enquiry Committee. The Committee is headed by non-officials. The tariff rates are placed before the House in the shape of budget proposals. The rates are sanctioned by the Parliament. The rates, therefore, become a legislative policy as well as a legislative process."

(vii) Decision of the Supreme Court in the case of Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, reported in 1975 (1) SCC 737, wherein it has been held as under :

"The writ jurisdiction of High Courts is not intended to facilitate avoidance of obligations voluntarily incurred."

(viii) Decision of the Supreme Court in the case of State of Bihar Vs. Jain Plastics and Chemicals Ltd., reported in AIR 2002 SC 206, wherein it has been held as under :

"Whether the alleged non-supply of road permits

by the appellants would justify breach of contract by the respondent would depend upon facts and evidence and is not required to be decided or dealt with in a writ petition. Such seriously disputed questions or rival claims of the parties with regard to breach of contract are to be investigated and determined on the basis of evidence which may be led by the parties in an properly instituted civil suit rather than by a Court exercising prerogative of issuing writs."

(ix) Decision of the Supreme Court in the case of Smt. Rukmanibai Gupta Vs. Collector, Jabalpur and Others, reported in 1980 (4) SCC 556, wherein it has been held as under :

"The contract provided for resolution of dispute arising out of the carrying out of contract. The writ jurisdiction of the High Court under Article 226 of the Constitution is not intended to facilitate avoidance of obligation voluntarily incurred."

C. Contracts are not enforceable for violation of Article 14 of the Constitution under writ jurisdiction.

It is contended that the Government or the Government undertaking if enters into the contract with a private party, for breach of that contract, remedy for a private party would be under the private law the rights governed by the General Law relating to the contract with reference to the provisions of Specific Relief Act and they cannot be enforced and the question regarding public liability based on Article 14 will not be applicable for a decision. He relied on the following decisions :

(i) Decision of the Supreme Court in the case of Indian Oil Corporation Ltd. Vs. Amritsar Gas Service And others, reported in 1991 (1) SCC 513, wherein it has been held as under :

This is on account of the fact that the suit was based only on breach of contract and remedies flowing therefrom and it is on this basis alone that the arbitrator has given his award. Shri Salve is, therefore, right in contending that the further question of public law based on Article 14 of the Constitution do not arise for decision in the present case and the matter must be decided strictly in the realm of private law rights governed by the general law relating to

contracts with reference to the provisions of the Specific Relief Act providing for non-enforceability of certain types of contracts."

(ii) Decision of the Supreme Court in the case of M/s.Radhakrishna Agarwal and others Vs. State of Bihar and others, reported in AIR 1977 SC 1496, wherein it has been laid down as under :

"But after the State or its agents have entered into the field of ordinary contract, the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines rights and obligations of the parties inter se. No question arises of violation of Art. 14 or of any other constitutional provision when the State or its agents purporting to act within this field, perform any act.

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The limitations imposed by rules of natural justice cannot operate upon powers which are governed by the terms of an agreement exclusively. The only question which normally arises in such cases is whether the action complained of is or is not in consonance with the terms of the agreement. As already pointed out by us, even if by some stretch of imagination some case of unequal or discriminatory treatment by the officers of the State of persons governed by similar contracts is sought to be made out, a satisfactory adjudication upon the unusual facts of such a case would necessitate proper pleadings supported by acceptable evidence."

(iii) The decision of the Supreme Court in the case of Premji Bhai Parmar and Others Vs. Delhi Development Authority and Others, reported 1980 (2) SCC 129, wherein it has been held as under :

"A petition to the Supreme Court under Article 32 is not a proper remedy nor is the Court a proper forum for reopening the concluded contracts with a view to getting back a part of the purchase price paid and the benefit taken. The DDA is covered by the Article 12 and while determining the price of flats constructed by it, it acts purely in its executive capacity. But after the

State or its agents have entered into the field of ordinary contract, no question arises of violation of Article 14 or of any other constitutional provision. In absence of any special statutory power or obligation on the State in the contractual field apart from the contract, the petitioners are bound by the terms and conditions of the contract. The camouflage of Article 14 cannot conceal the real purpose motivating the petitions, namely, to get back a part of the purchase price of flats paid by the petitioners with wide open eyes after flats have been securely obtained. Those who contract with open eyes must accept the burdens of the contract along with its benefits. Reciprocal rights and obligations arising out of contract do not depend for their enforceability upon whether a contracting party finds it prudent to abide by the terms of the contract. The jurisdiction under Article 32 is not intended to facilitate avoidance of obligations voluntarily incurred.

D. Doctrine of fairness, reasonableness and principles of natural justice.

Learned counsel for the respondent no. 1 submitted that the terms and conditions are required to be followed in the matter of contract between the State, Statutory Body or State Undertaking and individual, and the doctrine of fairness, reasonableness or principles of natural justices are not attracted in the matters of contractual obligations and he relied on the following decisions :

(i) Decision of the Supreme Court in the case of Assistant Excise Commissioner and Others Vs. ISSAC Peter and Others, reported in 1994 (4) SCC 104, wherein it has been laid down as under :

"We are, therefore, of the opinion that in case of contracts freely entered into with the State, like the present ones, there is no room for invoking the doctrine of fairness and reasonableness against one party to the contract (State), for the purpose of altering or adding to the terms and conditions of the contract, merely because it happens to be the State.

There is no compulsion on anyone to enter into contracts. It is voluntary on both the sides. There can be no question of the State

power being involved in such contracts. It bears repetition to say that the State does not guarantee profit to the licensees in such contracts. There is no warranty against incurring losses. It is a business for licensees. Whether they make profit or incur loss is no concern of the State. In law, it is entitled to its money under the contract. It is not as if the licensees are going to pay more to the State in case they make substantial profits. We reiterate that what we have said hereinabove is in the context of contracts entered into between the State and its citizens pursuant to public auction, floating of tenders or by negotiation."

(ii) Decision of the Supreme Court in the case of State of Gujarat and Others Vs. Meghji Pethraj Shah Charitable Trust and Others, reported in 1994 (3) SCC 552, wherein it has been held as under :

"It was - as has been repeatedly urged by Shri Ramaswamy - matter governed by a contract, the writ petition is not maintainable since it is a public law remedy and is not available in private law field, e.g. where the matter is governed by a non-statutory contact."

E. Effect of proceedings under 22 (1) of the SICA.

The contention of the learned counsel for the respondent is that the proceedings u/s 22 (1) of the SICA for revival of the unit and rehabilitation do not restrict eviction proceedings against the sick company or unit. Rehabilitation proceedings u/s 22(1) of the SICA are required to be completed within shortest period and maximum period has been provided by the Supreme Court is six months from the date when the Company was detected as sick company. It is also contended that the proceedings u/s 22 (1) of the SICA for rehabilitation do not impose restriction or prohibition on the eviction proceedings by the owner of the land against the sick company or unit or lessee or a tenant. He relied on the following decisions:

(i) Decision of the Supreme Court in the case of S.R.F. Limited Vs. M/s. Garware Plastics and Polyesters Ltd. and Others, reported in AIR 1995 SC 2228, wherein it has been held as under :

"The legislative intent which, therefore, becomes

clear is that sick or potentially sick industry should be detected timely. Proceedings for revival and rehabilitation of the sick unit or potentially sick company should expeditiously be completed within the time frame and if unavoidable, it should be done within a reasonable time thereafter, say six months."

(ii) Decision of the Supreme Court in the case of Gujarat Steel Tube Co. Ltd. Vs. Virchandbhai B. Shah and Others, reported in AIR 1999 SC 3839, wherein it has been held as under :

"The High Court and the Appellate Bench of the Small Causes Chief Court were, therefore, right in coming to the conclusion that the provisions of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 did not in any way prevent the filing of an eviction petition on the ground of non-payment of rent and that the order under Section 11 (4) of the Bombay Rent Act could be passed."

(iii) Decision of the Supreme Court in the case of M/s. Shree Chamundi Mopeds Ltd. V. Church of South India Trust Association, Madras, reported in AIR 1992 SC 1439, wherein it has been laid down as under :

"We are, therefore, of the view that Section 22 (1) does not cover a proceeding instituted by a landlord of a sick industrial company for the eviction of the company premises let out to it."

8. Besides legal arguments, learned counsel for the respondent contended on merits of the case that the precious land of very large proportion is lying unused from 1986 and the petitioner has not complied with the terms and conditions of the contract. The petitioner was given sufficient opportunity to remedy breaches but it failed to do so, hence under the terms and conditions of the Lease Deed, the lease stands automatically determined and hence it is not open to them to challenge it in writ petition.

9. It is also stated in the counter affidavit filed by the respondent Kandla Port Trust, that the land in question is situated very near to oil jetties along side the creek and navigational channel which is required for future development of the Port Trust. Kandla Port trust wants to retain this valuable land for its own purpose. The respondent Kandla Port Trust is required to provide

basic infrastructure to all the port users which includes construction of jetties, providing storage facility, putting up containers storage terminal, providing marshalling yard etc. As such, the land in question is required for use of the respondent Kandla Port Trust itself. It is also stated that the lease has come to an end from the date when the petitioner ceased to valid licence for salt manufacturing. As the licence has not been renewed after 30-6-1987, the petitioner cannot claim any right on their application for regularisation of the licence.

10. The first question arises for determination before this Court is as to whether the lease granted to the petitioner can be directed in writ jurisdiction to be extended or renewed ? The lease has been determined/cancelled on the basis of violation of mainly terms and conditions mentioned in Clause 7 of the Lease Deed executed in the year 1979 with effect from 1974 for a period of 30 years i.e. from 9-4-1974 to 9-4-2004. Clause 7 of the lease agreement requires the petitioner to have requisite licence issued by the Government of India for manufacturing of salt and other bye-products in the premises. In the present case, the petitioner has no licence issued by the Government of India since 1987. If the petitioner has no requisite licence for manufacturing of salt on the land then it would be difficult to pass the order directing the respondent - Kandla Port Trust to extend the lease to the petitioner for the remaining period till 9-4-2004. Though it is mentioned in Clause 7 of the Lease Agreement that in the event of withdrawal and cancellation of such licence by the said Government before expiry of the term of this covenant the lease granted shall be deemed automatically to have been determined. There may be instances for withdrawal or cancellation of the lease deed. But in the present case, the petitioner has no licence for manufacturing of salt issued by the Government of India since 1987 and that will also be included as a condition for withdrawal or cancellation of the licence and that could be a ground for cancellation of the lease deed. On 27-5-1991 the notice was issued to the petitioner under Clause 5 of the lease agreement by the respondent Kandla Port Trust requiring the petitioner to remedy the breaches in respect of Clause (2) (iii), Clause 2 (v) and Clause 7 of the lease agrement. Clause 2 (iii) of the Lease Agreement provides that the petitioner should pay all arrears of ground rent and other payments due or penalties imposed in respect of the demised premises given to him. But the petitioner has not paid that amount of ground rent to the respondent no. 1 from the

initial stage till the date of notice. On earlier occasions the respondent no.1 Kandla Port Trust had to take legal proceedings for recovery of ground rent as the petitioner company was in arrears of ground rent for more than 2 to 3 years. As Clause 2 (v) of the lease agreement, requires the petitioner to use the premises primarily for salt manufacturing purpose, but the petitioner company stopped manufacturing of process of salt from 1987. Hence, that condition no. 2 (v) of the lease agreement was also violated by the petitioner Company. Clause 7 of the lease agreement is regarding requisite licence. The petitioner company is not having requisite licence for carrying out manufacturing activities of salt from 1987. The petitioner Company without getting licence for manufacturing salt from the competent authority and breaches remedied, the petitioner Company approached the BIFR for declaration that the petitioner's unit is a sick unit. Firstly, that application was not entertained. But later on after the order of the appellate authority, that application was entertained and the petitioner's unit was declared as a sick unit. As such, the petitioner has been given sufficient opportunity for remedying the breaches. There was no problem or difficulty for the petitioner to move before the licencing authority to continue its licence for a further period. Even electricity was not disconnected and other process or activities could have been carried out by the petitioner though electricity was discontinued from 1989. As such, sufficient opportunity of hearing was given to the petitioner for remedying breaches. As per the notice given to the petitioner by the respondent Kandla Port Trust, in case the petitioner fails to remedy breaches further necessary actions were not required to be taken against the petitioner's unit except to determine lease. Learned counsel for the petitioner contended that no notice has been given for cancellation of lease by the respondent Kandla Port Trust. But it appears from the record of this case that at the earlier point of time the notice has been issued to the petitioner thereafter proceedings before the B.I.F.R. were initiated. The petitioner has not informed about progress of rehabilitation or revival of the petitioner's unit. Even there is no statutory provision requiring the respondent Kandla Port Trust to issue notice to the petitioner for determining the lease as lease stands automatically determined under Clause 7 of the lease deed for want of having requisite licence issued by the Government of India for manufacturing salt. However, the petitioner has already been given sufficient opportunity of hearing by giving notice dated 27-5-1991 requiring the petitioner to remedy breaches. As such, it

cannot be said at this stage that the petitioner has not been given any opportunity of remedying breaches before cancellation/determination of the lease deed and it also cannot be said that the respondent no. 1 has not played fairly though as stated above in the decisions of the Supreme Court, the principles of natural justice and fair play cannot be enforced by writ petition in the contract matter between the statutory body and the private person. Moreover, an individual who enters into an agreement or contract with the statutory body is bound by terms and conditions of the agreement and those terms and conditions cannot be challenged in writ jurisdiction.

11. In the last, learned counsel for the petitioner submitted that under the proceedings of Section 22 (1) of the SICA there was sufficient progress and the matter was to be matured for revival of the petitioner's unit. The rehabilitation scheme has already been submitted and an amount of Rs.50 lacs was also deposited by the new promoters. The action on the part of the respondent Kandla Port Trust is illegal, arbitrary in determining the lease.

12. I have carefully considered the arguments. The petitioner has not informed about progress of rehabilitation scheme and the proceedings u/s 22 (1) and 22 (4) of the SICA before the BIFR and those decisions taken under the provisions of SICA behind the back of Kandla Port Trust by the BIFR are not binding on the respondent Kandla Port Trust.

13. Learned counsel for the respondent contended that the rehabilitation scheme can be implemented on any other land as the land in question is required for development of Kandla Port Trust itself. He has also submitted that the proceedings before BIFR are not binding on the respondent Kandla Port Trust as they were instituted behind the back of the respondent - Kandla Port Trust. In my view, the rehabilitation scheme cannot be directed for implementation on the lease land of the respondent no. 1 after a period of 16 years particularly lease term expires in the month of April 2004. When the lease will not be extended or renewed as lease land is required by the respondent no. 1 for the development of the Kandala Port Trust itself.

14. Moreover, in the decision of the Supreme Court as stated above, the rights of the owner for getting possession of the land or for resuming the land are not affected by the provisions of SICA. As such, In view of the position as stated above, I am constrained to hold

that the proceedings initiated by the respondent - Kandla Port Trust against the petitioner Company for determining the lease deed are legal, just and proper and the same cannot be said to be illegal, unjust and arbitrary. In the facts and circumstances of the case and considering the relevant material on record, I do not find any illegality or arbitrariness calling for interference by this Court in exercise of extra ordinary jurisdiction under Article 226 of the Constitution of India. Therefore, Special Civil Application No. 2792 of 1995 is dismissed. Notice, if issued, is discharged with no order as to costs. The statement made by the learned counsel for the respondent no. 1 Kandla Port Trust in this petition that the possession shall not be disturbed, stands vacated.

15. So far writ petition being Special Civil Application No. 5180 of 1994 is concerned, it is stated that the Collector, Kachchh granted lease of the land of S. No. 503 admeasuring 1357.56 acres in Mithi Tohar village on 9-4-1974 for the purpose of manufacturing salt for the period of 20 years to the petitioner. Lease deed was executed on 17-3-1976 w.e.f. 9-4-1974 and lease was to expire on 9-4-1994. The petitioner moved an application on 29-10-1993 for renewal of the lease for further period of 20 years. The Collector vide order dated 17-3-1994 rejected the application, cancelling lease agreement dated 17-3-1976 and forfeiting the lease land to Government. The petitioner filed revision application before the Secretary (Appeals) Revenue Department on 4-4-1994 which was also summarily rejected on the basis of the order of the Government dated 30-4-1993. The petitioner's counsel raised similar contentions as raised in the writ petition No. 2792 of 1995 that the petitioner's unit was declared sick unit under the provisions of SICA. No order like impugned can be passed. The order is illegal, without the permission of Special Director appointed by BIFR. An amount of Rs.53,603-30 was paid as ground rent and an amount of Rs.3,42,426/- was also paid on 19-2-1994 as royalty. During the pendency of proceedings under the provisions of SICA the impugned order is illegal and not sustainable. The order was passed in violation of principles of natural justice, and violative of Art. 14, 19 (1) (g) and 21 of the Constitution. The impugned order is arbitrary, malafide and is not sustainable in the eye of law. I have perused the order dated 17-3-1994 passed by the Collector. The Collector has mentioned that show cause notice was issued to the petitioner and found that Mamlatdar submitted the report dated 10-11-1989 to the Deputy Collector that the petitioner's

unit was closed since last 14-15 years. Lessee had committed breach of conditions no. 1 and 3 of the extension of lease granted by the order dated 28-6-1974 of the Government and conditions no. 1-A, 6-A and 6-B of the lease agreement. On the date of hearing on 19-2-1990 the representative of the petitioner was present but no evidence or material was produced to show that the petitioner's unit was in operation. Electricity was discontinued on 19-9-1982. The petitioner was not producing salt since last 14-15 years. The outstanding dues of ground rent had not been paid and royalty was also not paid. The Collector has elaborately considered the relevant facts while passing the impugned order. As it has already been held that the petitioner is bound by the terms and conditions of the lease deed, doctrine of fair play and principles of natural justice are not applicable to contractual obligation and for the enforcement of contractual obligation writ jurisdiction can not be invoked. Moreover, there are additional facts which disentitle the petitioner for the relief/s claimed by it.

16. After cancellation of lease granted to the petitioner and forfeiture of the land, the land of the petitioner was resumed by the State Government on 22-3-1994 and the said land has been allotted to the respondent no. 4 on 18-3-1994 and the possession of the said land was also given to the respondent no. 4. This Court granted status-quo vide order dated 6-4-1994 but after hearing both the parties ad-interim order was vacated vide order dated 6-4-1994 as the petitioner is not holding lease of the land in its favour. As the possession of the land was given to the respondent no. 4 who has started manufacturing work of salt and is carrying on its business thereon since 1994. Even it would be very difficult for this Court to direct the respondent the State Government to cancel allotment of the land made in favour of the respondent no. 4 who has invested huge amount in the establishment of the unit and reallot the same or particular portion of the land to the petitioner who has no lease and licence for manufacturing salt since 1994 under the guise of rehabilitation and revival of the petitioner's unit and the respondent no.4 be made to suffer irreparable loss for its no fault and it is impossible, in the facts and circumstances of this petition to set aside the allotment of the land made in favour of the respondent no. 4 and to dispossess the respondent no. 4 from the land in dispute and to reallot the same to the petitioner. In the present case, the petitioner is not having any licence since 1994 and petitioner's unit is not in operation. In the facts and

circumstances of the case and considering the submissions made by the learned counsel for the parties as well as the material on record, this petition also deserves to be dismissed.

16. Accordingly Spl. C.A. No. 5180 of 1994 is dismissed. Notice stands discharged, with no order as to costs. Status-quo if any granted as qua possession stands vacated forthwith.

(Kundan Singh, J.)

/JVSatwara/